IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

FRIDAY, THE 23RD FEBRUARY 2007 / 4TH PHALGUNA 1928

WA.No. 58 of 2007()

{IN W.P.C.NO.19714/2004 OF THIS COURT}
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APPELLANTS: PETITIONERS
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1. UMAYAMMA.T.V., PRINCIPAL,
GOVERNMENT GIRLS H.S.S., NORTH PARAVUR.

2. ALPHONSA ENGRATIDA P.J.,
HSST, PRINCIPAL, GOVERNMENT H.S.S.,
EDAPALLY, ERNAKULAM DISTRICT.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS:
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1. STATE OF KERALA, REP. BY SECRETARY,
GENERAL EDUCATION,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DIRECTOR, HIGHER SECONDARY
EDUCATION, HOUSING BOARD BUILDINGS,
SANTHI NAGAR, THIRUVANANTHAPURAM.

3. JOHN BENJAMIN.D., PRINCIPAL,
GOVERNMENT GIRLS HIGHER
SECONDARY SCHOOL,
NEYYATTINKARA, THIRUVANANTHAPURAM.

ADDL.R6: K.SUDHA, REGIONAL DEPUTY DIRECTOR, O/O.
R.D.D., HIGHER SECONDARY EDUCATION,
EDAPPALLY, KOCHI-24.

R1 & R2 BY GOVT. PLEADER SRI. SANDESH RAJA
R3 BY ADV.SRI.O.V.RADHAKRISHNAN

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 23/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.A.ABDUL GAFOOR & ANTONY DOMINIC, JJ

W.A.NO.58 OF 2007

Dated this the 23rd February, 2007

JUDGMENT

Abdul Gafoor, J

The only question mooted out in this writ petition is whether the service put in by the appellants/writ petitioners in Malappuram District can be tagged on to their service in Ernakulam District, for the purpose of counting seniority. Admittedly, both the appellants were recruited in Malappuram District, which is a unit by itself, as High School Assistant. While so, the first among them applied for an inter-district transfer to Ernakulam District and joined in a School there on 4/9/81. The other applied for direct recruitment as a teacher in Ernakulam and thus got fresh appointment and joined a school in Ernakulam District on 8/2/1978. She was really advised for that appointment by Public Service Commission on 10/1/1978. Going by Rule 27(a) of the General Rules

in KS & SSR, the Seniority has to be counted, so far as the first is concerned with effect from the date of joining duty in the New District, as inter-district transfer was permitted and granted only on an undertaking that he or she will be treated as junior most in the new District. The proviso to Rule 27(a) is also a statutory provision in that regard. Therefore, the first one can count her seniority only with effect from 4/9/81. The other being a fresh direct recruit in Ernakulam, her seniority will be covered by Rule 27(c), from the date of advice. Therefore she can count her seniority only with effect from 10/1/78.

2. Promotion to the post of Higher Secondary School Teachers is to be made on the basis of seniority, on state-wise basis. This has to be based on the District wise seniority. Seniority is the one statutorily recognised in terms of Rule 27 (a) or 27(c) as the case may be of the General Rules, as discussed above. However, when provisional seniority lists were prepared, the writ

appellants were given seniority reckoning the service earlier than 4/9/81 and 10/1/78 respectively tagging the service in Malappuram District as well. This was subsequently rectified and their seniority was reduced reckoning the correct dates as mentioned above. It was in the above circumstances, they approached this Court contending that so far as the High School Assistants are concerned, the seniority for the purpose of promotion as Higher Secondary School Teachers shall be governed by para 10 (iv) of Ext.P1 Government Order which is as under;

> "Fresh Temporary appointments of Higher Secondary Teachers in the scale of pay of Rs.1450-2825 will be made, for which, the Director of Higher Secondary Education will invite fresh applications as per the qualifications prescribed by the Government. The Temporary appointment will be made on State-wise basis. The selection will be on seniority basis, based on their

> length of continuous service in the category of HSAs/HSA (Language); and only in their absence, the te3achers (Primary Assistant Teachers/junior Language Teachers, etc) in the Primary Section, and only in their absence, the other categories of Teachers (specialist/Craft Teachers) will be considered for such Temporary appointments."

Reliance is also placed on the last sentence in para 8 of the said Government Order which reads as under;

> "The selection and appointments should be on the State-Wise seniority basis as it would give fair and equal opportunity to all teachers."

It is further submitted that a later Government order G.O.(MS)No.43/2005 dated 11.2.2005 also provides that the total service both as High School

Assistant and Higher Secondary School Teacher shall be taken as the criterion for promotion as Principal.

3. Even in Ext.P1 Government Order seniority is the criterion for promotion, the total teaching service is also mentioned with reference to the seniority. Seniority is covered statutorily as already mentioned above. The total teaching service with reference to the seniority is the total teaching service commencing from the date which counts for seniority. Otherwise, the result will be that Ext.P1 executive order results in amendment of the statutory rules contained in Rule 27 of the General Rules. Ext.P1 is always be subject to the statutory rule governing seniority. Equally so is the teaching service for the purpose of promotion as mentioned in 2005 Government Order as well. More over it is in respect of promotion as Principal taking note of service as HSA as well. When the seniority is covered by the statutory rules and Ext.P1 Government Order and the later

Government order are read subject to the statutory rules, the petitioners cannot, count their service prior to 4.9.81 or 10.1.78 as the case may be to add to their seniority. If, on the other way, what is to be taken is experience or total experience, necessarily, they may be justified in counting their total experience as teacher. Unfortunately, what is contemplated by the relevant Government Order is not the experience but the service which counts for seniority. So we find no reason for interference with the finding entered into by the learned single Judge.

W.A is dismissed.

Sd/-
K.A. ABDUL GAFOOR, JUDGE

Sd/-
VI. **ANTONY DOMINIC, JUDGE**

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P.A. To Judge.

K.A.ABDUL GAFOOR, J.

CR.A.NO.112 of 1999

JUDGMENT

DATED .5.2006